

FS Agreement No. 13-MU-11030408-016
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
CITY OF FLAGSTAFF, ARIZONA
And The
USDA, FOREST SERVICE
COCONINO NATIONAL FOREST
TO GRANT COOPERATING AGENCY STATUS

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the City of Flagstaff, Arizona, hereinafter referred to as "The City," and the USDA, Forest Service, Coconino National Forest, hereinafter referred to as the "U.S. Forest Service."

Background: During the November 2012 elections, residents of Flagstaff, AZ approved a \$10 million bond to support forest restoration work on the Coconino National Forest and State of Arizona lands. This is one of only a handful of examples in the country where forest restoration work on the National Forests is being funded by a municipality. The Coconino National Forest, which surrounds Flagstaff, has invested considerable energy and resources in restoring forest ecosystems and reducing fire danger over the past decade, including treatment of hundreds of thousands of acres. Likewise, the City of Flagstaff has worked pro-actively with various partnerships (ex. Greater Flagstaff Forests Partnership) and partnered with land management agencies for years to reduce fire danger, restore forest health, and protect the community at large.

Despite these efforts, however, the experience of the Schultz Fire in 2010 demonstrated the potential for severe downstream impacts even when residential areas are spared from the fire itself. Following the Schultz Fire, severe and repeated flooding occurred in unincorporated neighborhoods just outside Flagstaff city limits, causing tens of millions of dollars of damage to infrastructure and private property. Projections indicate that a wildfire on the steep slopes above Flagstaff could cause similar impacts to large portions of the City of Flagstaff, and that a wildfire on the steep slopes of Mormon Mountain could severely degrade the Lake Mary Reservoir, potentially rendering 50% of the city's water supply unsuitable. These areas have not been adequately addressed in the past due to several complicating factors, including steep and rocky terrain, wildlife and social concerns, and economic infeasibility due to low timber value and the costs of extraction. The \$10 million bond provides an opportunity to work collectively on a solution to address these difficult but crucial areas affecting the City of Flagstaff.

This MOU tiers to the City of Flagstaff and the USDA Forest Service MOU (FS Agreement No. 12-MU-11030420-039), which documents the cooperation between both parties to establish a joint program to proactively improve the health and resiliency of the Dry Lake Hills portion of the Rio de Flag Watershed, and the Lake Mary Watershed.



Cooperating Agency status will extend to the environmental planning effort within the aforementioned watersheds, herein referred to as “the Flagstaff Watershed Protection Project.”

Title: Granting the City of Flagstaff (The City) Cooperating Agency status to jointly analyze treatment methods and options for reducing wildfire risk and subsequent flooding within the Dry Lake Hills portion of the Rio de Flag Watershed and the Lake Mary Watershed.

- I. PURPOSE:** The purpose of this MOU is to grant The City cooperating agency status, and also to document the cooperation between the parties to work together through the environmental planning process to achieve a shared goal of reducing the risk of unnatural, high-severity wildfire and subsequent flooding in the Dry Lake Hills portion of the Rio de Flag Watershed and the Lake Mary Watershed in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

To achieve mutual benefits in the Rio de Flag and Lake Mary Watersheds, the parties agree to work together to:

- A. Cooperate to help achieve better outcomes while ensuring each agency's key mandates and legal requirements are adequately and appropriately met.
- B. Communicate openly and provide a conduit for the timely exchange of information.
- C. Provide a framework to fully consider the physical, biological, social, economic, and cultural impacts of the Flagstaff Watershed Protection project.
- D. Resolve conflicts at the lowest administrative level without having to resort to judicial review.
- E. Conduct a periodic review of this MOU for evaluation of its effectiveness.

In consideration of the above premises, the parties agree as follows:

III. THE CITY OF FLAGSTAFF SHALL:

- A. Participate early in the National Environmental Policy Act (NEPA) process as a member of the Interdisciplinary Team (IDT) and to make meaningful and timely input regarding impacts to Flagstaff residents and infrastructure from activities proposed for the Flagstaff Watershed Protection project.
- B. Provide special expertise, comments and City input during the planning process, including but not limited to fire management, hydrology and storm water, monitoring information and data (social, economic, ecological), public affairs, inventories, city tax issues, and past actions on non-federal lands in the area. The City will provide at any time any other background information about the City's cultural, economic, and natural resources that The City believes are useful.



- C. Coordinate public involvement efforts with the Forest Service so as to provide a unified approach and to effectively inform the public on potential actions and their effects.
- D. Recognize the Forest Service as the sole decision maker for all actions proposed on the National Forest.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Retain its sole and ultimate decision-making authority regarding the use of National Forest System lands, using the analysis completed during the course of NEPA planning efforts and associated supporting records as the basis for making the decision.
- B. Provide timely notification of Interdisciplinary Team (IDT) meetings and field trips to the appointed City representative.
- C. Identify any requirements necessary for compliance with the Coconino Land and Resource Management Plan (1987, as amended or revised) or to amend the Forest Plan as needed.
- D. Be responsible for the preparation, quality, and content of environmental documents. As lead agency, the U.S. Forest Service retains final responsibility for the content of all planning and NEPA documents, which include the scoping letter, analysis document, and determination of environmental impacts. The U.S. Forest Service's responsibilities include determining the purpose of and need for the project, developing the proposed action, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. The U.S. Forest Service will also be responsible for completing Endangered Species Act and National Historic Preservation Act compliance.
- E. Provide opportunities for The City to review and comment on environmental analysis documents, schedules, and plans prior to public release.
- F. Consider, to the maximum extent possible and incorporate as appropriate, the information provided by The City into the appropriate analysis documents.
- G. Notify The City of any public notices made by the U.S. Forest Service pertaining to the project. To the fullest extent consistent with its responsibilities as lead agency, the U.S. Forest Service will consider the comments, recommendations, data, and/or analyses provided by the Cooperators in the NEPA planning process, giving particular consideration to those topics on which the Cooperators are acknowledged to possess jurisdiction by law or special expertise.



- H. Keep The City apprised of the project schedule and provide an updated schedule as it becomes available.
- I. Coordinate with The City on public involvement efforts and during implementation of actions authorized under previous NEPA decisions and the Flagstaff Watershed Protection Project planning effort.
- J. Documenting disagreement or inconsistency: Where the U.S. Forest Service and The City disagree on substantive elements of the analysis document (such as the designation of the alternatives to be analyzed or the analysis of effects), and these disagreements cannot be resolved, the U.S. Forest Service will include a summary of The City's views in the project record. The U.S. Forest Service will also describe substantial inconsistencies between its proposed action and the objectives of state, local, or tribal use plans and policies.

V. JOINT RESPONSIBILITIES

- A. The parties agree to use their best efforts to meet the time frames established in the agreement, to work cooperatively, and to resolve differences as quickly as possible.
- B. This agreement in no way restricts the Forest Service or The City from participating in similar activities with other public or private agencies, organizations, or individuals.
- C. The U.S. Forest Service and The City and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- D. Management of information and records:
 - a. Any records or documents generated as a result of this MOU shall become part of the official U.S. Forest Service record maintained in accordance with applicable U.S. Forest Service Records Management Policies. Any request for release of records associated with the implementation of this MOU to anyone outside the Parties must be determined by the U.S. Forest Service based on applicable laws, including the FOIA and the Privacy Act.
 - b. The City acknowledges that all supporting materials and draft documents used in the preparation of any NEPA planning associated with this MOU may become part of the U.S. Forest Service project record case file.
 - c. Press inquiries on the proposed actions and environmental analysis process should be referred to the U.S. Forest Service. Press inquiries on The City's role in the process would be answered by The City's officials. The City agrees to advise the U.S. Forest Service of press inquiries either before or soon after contact with the press.

**VI. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

- A. **PRINCIPAL CONTACTS.** Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal City Contacts:

City Program Manager	City Administrative Contact
Paul Summerfelt Wildland Fire Management Officer City of Flagstaff 211 W. Aspen Flagstaff, AZ 86001 Telephone: 928-213-2509 FAX: 928-213-2599 Email: psummerfelt@flagstaffaz.gov	Stacey Brechler-Knaggs Grants Manager City of Flagstaff 211 W Aspen Flagstaff, AZ 86001 Telephone: 928-213-2227 FAX: 928-779-7656 Email: sknaggs@flagstaffaz.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Erin Phelps Planning Lead Coconino NF, Flagstaff Ranger District 5075 N Hwy 89 Flagstaff, AZ 86004 Telephone: 928-527-8240 FAX: 928-527-8288 Email: ephelps@fs.fed.us	Elizabeth Vensel, Grants Management Specialist Coconino NF, Supervisor's Office 1824 S Thompson Street Flagstaff, AZ 8600-2693 Telephone: 928-527-3561 FAX: 928-527-3620 Email: evensel@fs.fed.us

- B. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or The City is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the City Program Manager, at The City's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.



- C. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or The City from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. ENDORSEMENT. Any of The City's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of The City's products or activities, and does not by direct reference or implication convey The City's endorsement of the U.S. Forest Service's products or activities.
- E. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- F. USE OF U.S. FOREST SERVICE INSIGNIA. In order for The City to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- G. USE OF THE CITY INSIGNIA. In order for the U.S. Forest Service to use The City insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from The City's Program Manager. A writer request must be submitted and approval granted in writing prior to the use of the insignia.



- H. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- I. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- J. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- K. PUBLIC NOTICES. It is the U.S. Forest Service's and The City's policies to inform the public as fully as possible of its programs and activities. The U.S. Forest Service and The City are encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:
- "The Coconino National Forest of the U.S. Forest Service, Department of Agriculture, and the City of Flagstaff are working together to improve the health of the watersheds..."
- The U.S. Forest Service and The City may call on or coordinate with each other's Public Affairs/Information Office regarding public notices. The U.S. Forest Service and The City are requested to provide copies of notices or announcements to the other's Program Manager and their respective Public Affairs/Information Office as far in advance of release as possible.
- L. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. The U.S. Forest Service and The City shall acknowledge each other's support in any publications, audiovisuals, and electronic media developed as a result of this MOU.



- M. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. The City shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

- N. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- O. DEBARMENT AND SUSPENSION. The City shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should The City or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- P. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- Q. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through three (3) years from the date of last signature, at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.



R. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

GERALD W. NABOURS, Mayor
City of Flagstaff, Arizona

1/22/13

Date

Attest:

Elizabeth A. Burke, City Clerk

1/22/13

Date

Approved as to form:

Rosemary H. Rosales, City Attorney

1/18/13

Date

M. EARL STEWART, Forest Supervisor
U.S. Forest Service, Coconino National Forest

28 Jan 2013

Date

The authority and format of this agreement have been reviewed and approved for signature.

Elizabeth A. Vensel

12/21/2012

Date

U.S. Forest Service Grants Management Specialist

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.